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5 cc: order, docket, remand letter to JS - 6  
6 Los Angeles Superior court, Long Beach  
7 No. 10 U 00013

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 HSBC BANK USA, NATIONAL ) Case No. CV 10-04127 DDP (RZx)  
ASSOCIATION AS TRUSTEE FOR )  
12 WELLS FARGO ASSET SECURITIES ) **ORDER GRANTING PLAINTIFF'S MOTION**  
CORPORATION, MORTGAGE PASS- ) **TO REMAND AND DENYING PLAINTIFF'S**  
13 THROUGH CERTIFICATES, SERIES ) **REQUEST FOR ATTORNEY FEES**  
2007-11, )  
14 Plaintiff, ) [Motion filed on August 24, 2010]  
15 v. )  
16 ELISA E. SANTIAGO, GIL SJ )  
SANTIAGO; and DOES 1 through )  
100, inclusive, )  
17 Defendants. )  
18 \_\_\_\_\_ )  
19 \_\_\_\_\_ )

20 This matter comes before the court on a Motion to Remand Case  
21 and Request for Attorney Fees filed by the plaintiff HSBC Bank USA,  
22 National Association as Trustee for Wells Fargo Asset Securities  
23 Corporation, Mortgage Pass-Through Certificated, Series 2007-11  
24 ("HSBC Bank"). After reviewing the papers submitted by the  
25 parties, the court GRANTS the motion to remand, DENIES the request  
26 for attorney fees, and adopts the following Order.

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1       **I. BACKGROUND**

2                  This is a residential unlawful detainer action commenced after  
3 a non-judicial foreclosure sale. On April 26, 2007, a deed of  
4 trust was executed by Elisa E. Santiago and Gil SJ Santiago  
5 ("Defendants") encumbering real property located at 5801 East Los  
6 Arcos Street in Long Beach, California. (Pl.'s Request for  
7 Judicial Notice ("RJN") Ex. 1, Deed of Trust) On December 7, 2009,  
8 the trustee or successor trustee under the deed of trust conducted  
9 a trustee's sale of the property, and HSBC Bank purchased the  
10 property. (RJN Ex. 2, Trustee's Deed Upon Sale) At the time,  
11 Defendants were in possession of the property and Defendants  
12 continue to possess the property.

13                  On January 5, 2010, HSBC Bank filed an unlawful detainer  
14 action against Defendants in the Los Angeles County Superior Court,  
15 Long Beach Judicial District seeking to recover possession of the  
16 property. (RJN Ex. 3, Complaint) On January 7, 2010, HSBC Bank  
17 served Defendants with process. (RJN Ex. 4) On January 11, 2010,  
18 Defendants filed an Answer. (RJN Ex. 5)

19                  On June 3, 2010, Defendants filed a Notice of Removal in this  
20 court. The Notice of Removal states that federal question  
21 jurisdiction exists because Defendants' "[principal] claim for  
22 relief concerns [HSBC Bank's] wrongful foreclosure practices" which  
23 arise under federal law.

24                  On August 24, 2010, HSBC Bank filed a motion to remand this  
25 case and a request for attorney fees under 28 U.S.C. § 1447(c).  
26 HSBC Bank argues that (1) this court lacks subject matter  
27 jurisdiction over the unlawful detainer action and 2) Defendants'  
28 notice of removal was untimely. Because HSBC Bank filed the motion

1 for remand more than thirty days after the notice of removal was  
2 filed, the untimeliness argument is deemed waived. Maniar v. Fed.  
3 Deposit Ins. Co., 979 F.2d 782, 784-85 (9th Cir. 1992) (holding  
4 that because untimely removal is a procedural defect, the party  
5 moving for remand must move within thirty days after the filing of  
6 the notice of removal).

7 **II. DISCUSSION**

8       **A. Improper Removal Under 28 U.S.C. § 1441(b)**

9       Only actions that could have been filed in federal court  
10 originally may be removed by a defendant. 28 U.S.C. § 1441;  
11 Audette v. Int'l Longshoremen's and Warehousemen's Union, 195 F.3d  
12 1107, 1111 (9th Cir. 1999) (citing Caterpillar Inc. v. Williams,  
13 482 U.S. 386, 392 (1987)). One such type of case is a "federal  
14 question" case, i.e., one "arising under the Constitution, laws, or  
15 treaties of the United States." 28 U.S.C. § 1331. Generally, the  
16 presence or absence of federal question jurisdiction is governed by  
17 the "well-pleaded complaint rule," which provides that federal  
18 question jurisdiction exists only when a federal question is  
19 presented on the face of the plaintiff's properly pleaded  
20 complaint. Audette, 195 F.3d at 1111. Where both federal and  
21 state law claims are raised in a single action, the entire case may  
22 be removed. 28 U.S.C. § 1441(c). Also, federal question  
23 jurisdiction cannot be predicated on the existence of a federal  
24 defense. Franchise Tax Bd. of Cal. v. Construction Laborers  
25 Vacation Trust for S. Cal., 463 U.S. 1, 14 (1983) ("[S]ince 1887 it  
26 has been settled law that a case may not be removed to federal  
27 court on the basis of a federal defense . . . .").

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1       The complaint in this unlawful detainer action raises solely  
2 issues of state law, meaning that there is no federal question  
3 jurisdiction. 28 U.S.C. § 1331. The amount in controversy does  
4 not appear to exceed \$75,000, meaning that there is no diversity  
5 jurisdiction. 28 U.S.C. § 1332. Defendants' sole basis for  
6 federal jurisdiction is that HSBC Bank "must prove compliance with  
7 the Federal claims brought forth [by Defendants'] affirmative  
8 defenses." (Def. Opp. to Motion to Remand 4:1-2) There being no  
9 basis for federal subject matter jurisdiction, removal under 28  
10 U.S.C. § 1441 was improper.

11           **B. Attorney Fees Under 28 U.S.C. § 1447(c)**

12       Section 1447(c) provides that upon remand, a court may  
13 exercise its discretion to award attorney fees "incurred as a  
14 result of the removal." Where there is an objectively reasonable  
15 basis for seeking removal, attorney fees should be denied. Martin  
16 v. Franklin Capital Corp., 546 U.S. 132, 141, 126 S. Ct. 704, 711  
17 (2005). The statutory purpose of awarding attorney fees is to  
18 deter abuse, unnecessary expenses and harassment that may result  
19 with improper removal. 28 U.S.C. § 1447(c).

20       The court denies HSBC Bank's request for attorney fees.  
21 Defendants are proceeding without the assistance of counsel. While  
22 it is black letter law that defenses arising under federal law do  
23 not create removal jurisdiction, the court does not fault the  
24 Defendants for not having the same familiarity with the nuances of  
25 federal civil procedure that a lawyer should. See NCCS Inc. v.  
26 Frank Hegardt Ind., No. C-98-2637-VRW, 1998 WL 574379 at \*2 (N.D.  
27 Cal. Aug. 28, 1998).

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4 **III. CONCLUSION**

5 Because the court lacks subject matter jurisdiction, the court  
6 GRANTS HSBC Bank's motion to remand and DENIES the request for  
7 attorney fees.

8 IT IS SO ORDERED.

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IT IS SO ORDERED.

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Dated: January 18, 2011

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DEAN D. PREGERSON  
United States District Judge